

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.1146 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHIKHABHAI KACHARABHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1146 of 2004
MR PJ VYAS for Petitioner No. 1
MR NAGESH SOOD, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 28/07/2004

ORAL JUDGEMENT

RULE. Mr.Nagesh Sood, learned AGP, appears and waives service of rule on behalf of respondent Nos.1 & 2. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 08-09-2003 passed by the learned Joint Secretary (Appeals), Revenue Department, State of Gujarat whereby dismissed the Revision Application No.6 of 1998 and

confirmed the order dated 02-12-1997 passed by Collector, Banaskantha.

3. The brief facts of the present petition is that by order dated 31-08-1991 the Dy. Collector, Palanpur granted river Bhatha land admeasuring 2 Acres situated at Village Badarpura, Taluka Vadgam, District Banaskantha. The said land is situated between the bank of the river. The said order came to be taken under suo motu review by Collector, Banaskantha. According to the Collector, the land in question could not have been allotted/granted to the petitioner as the said land was not declared as permanent Bhatha land and was contrary to the government circular/resolution dated 08-11-1979. After giving opportunity of hearing to the petitioner the Collector, Banaskantha vide his order dated 02-12-1997 set aside the grant in favour of the petitioner by holding that the land in question is on the bank of river Saraswati and there is no policy of the State Government to dispose of the land which is on the river bank and that the Dy. Collector has no jurisdiction and authority to grant the land. Against the said order the petitioner preferred a Revision Application No.6 of 1998 before the revisional authority i.e. Secretary (Appeals), Revenue Department. The learned Joint Secretary (Appeals), Revenue Department by his order dated 08-09-2003 dismissed the said Revision Application No.6 of 1998 and confirmed the order passed by the Collector, Banaskantha. Being aggrieved and dissatisfied with the said order dated 08-09-2003 the present petition has been filed.

4. Mr.P.J.Vyas, learned advocate appearing on behalf of the petitioner, has vehemently submitted that the petitioner was granted the land in the year 1991 and the proceedings were initiated by the Collector in the year 1997 i.e. much after unreasonable period. He has also further submitted that there is no breach of condition and the petitioner is cultivating the land in question since 1991 and, therefore, requested to allow the present petition.

5. Mr.Nagesh Sood, learned AGP appearing on behalf of respondent Nos.1 and 2, has supported the order passed by the Collector as well as the revisional authority. He has submitted that grant in favour of the petitioner was contrary to the government circular/resolution dated 08-11-1979 and there is no provision to dispose of the river bank land. He has further submitted that only those lands which are declared/considered as permanent Bhatha land can be disposed of by the Prant Officer and as it was found that the land in question is not a permanent Bhatha land defined under the government

circular/resolution dated 08-11-1979 and, therefore, grant in favour of the petitioner was absolutely illegal and without any jurisdiction and, therefore, he requested to dismiss the present petition.

6. Heard the learned advocates appearing for the respective parties.

7. There is a policy of the State Government for disposal of the river Bhatha land. As per the government circular/resolution dated 08-11-1979 only those lands which are considered to be permanent Bhatha land can be disposed of and which lands are required to be considered as permanent Bhatha land is envisaged in the government circular/resolution dated 08-11-1979. There is no specific finding given by the authorities below to the effect that the land in question is permanent Bhatha land or not ? Under these circumstances, the matter is required to be remanded back to the Collector, Banaskantha for deciding the issue afresh in accordance with law and after giving an opportunity of being heard to the petitioner.

8. The Collector, Banaskantha is directed to consider the government circular/resolution dated 08-11-1979 and decide whether the land in question is to be considered as permanent Bhatha land or not as defined in the aforesaid government circular/resolution. If on evidence and finding it is found that the land in question which is allotted/granted to the petitioner is considered to be permanent Bhatha land as defined and envisaged under the aforesaid government circular/resolution, the order dated 31-08-1991 passed by the Dy. Collector, Palanpur would stand confirmed. However, if ultimately it is found that the land in question is not required to be considered as permanent Bhatha land then the order dated 31-08-1991 passed by the Dy. Collector in favour of the petitioner would stand quashed and set aside. Such exercise may be completed by the Collector, Banaskantha within a period of 01 (one) month from the date of receipt of copy of this order. The matter is now remanded to the Collector, Banaskantha for deciding the question in light of the observations made hereinbefore.

9. Rule made absolute to the aforesaid extent. No order as to costs. Direct service permitted.

Sd/-

[M.R.SHAH, J]

'Bhavesh'